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01/11/10

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Writ Petition (C) No. 6112/2007

Petitioner Bajaj Allianz General Insurance Company Limited, Through Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur (C.G.) **(Insurer)**

Versus

Respondents

1. Santoshi Yadav, W/o Late Shri Manoj Kumar, aged about 20 years;
2. Gulashan Kumar S/o Late Shri Manoj Kumar, aged about 01 year, minor represented through natural guardian mother Smt. Santoshi Yadav;
3. Dhansai Yadav, S/o Visambhar Yadav, aged about 45 years;
4. Gauri Bai Yadav, W/o Dhansai Yadav, aged about 43 years,
   All R/o Village-Kosamkhunta, Post-Ganod, Thana- Arang, District Raipur (C.G.) **(Claimants)**
5. Narottam Sinha, S/o Kamta Prasad Sinha, R/o Village – Bhansoj, Thana – Arang, District Raipur (C.G.) **(Driver)**
6. Parasram Sinha, S/o Not known, R/o Village – Bhansoj, Thana – Arang, District – Raipur (C.G.) **(Owner)**

Writ Petition Under Article 227 of Constitution of India

Present : Shri Sachin Singh Rajput, counsel for the petitioner
Shri S. Pandya, counsel for respondents No. 1,3 & 4.

ORAL ORDER
(Passed on 30TH October, 2007)

Heard on admission.

2. The petitioner is aggrieved by an order dated 16-08-2007 passed by VIIth Additional Motor Accidents Claims Tribunal, Raipur (hereinafter referred to as "the MACT") in Claim M.J.C. No. 59/2007 whereby the application under Order 47 Rule 1 of C.P.C. for review of the order awarding compensation against the petitioner while giving a right to recover from the owner was sought to be reviewed.

3. Learned counsel for the petitioner did not dispute that before the passing of the impugned order dated 16-08-2007 an appeal was filed by the owner and driver of the vehicle before the High Court.

4. By the impugned order, the MACT dismissed the application on the sole ground that in the appeal before the High Court the same grounds had been raised on which a review was sought.

5. Learned counsel for the petitioner submitted that on the date of the impugned order i.e. 16-08-2007, appeal filed by the owner and driver before the High Court had already been dismissed which fact was suppressed and on this ground, he prays that the impugned order be set aside.

6. However, I am not inclined to agree. It was open to the Insurance Company to prefer an appeal against the award passed by the MACT. No manifest error is seen in the dismissal of the application for review.

7. The petition being devoid of merit is dismissed at admission stage.

8. Accordingly, I.A. No. 01 for staying the execution of the award dated 04.04.2007 is also dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr